

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2313

Introduced by Assembly Member Buchanan

February 19, 2010

An act to add Section 21082.3 to the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2313, as amended, Buchanan. Greenhouse gas: emissions: significant effects.

The

(1) *The California Global Warming Solutions Act of 2006 requires the State Air Resources Board (state board) to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program, and requires the state board to adopt a statewide greenhouse gas (GHG) emissions limit equivalent to the statewide GHG emissions levels in 1990 to be achieved by 2020. The act requires the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emission reductions. The act requires all state agencies to consider and implement strategies to reduce their GHG emissions.*

~~This bill would declare the intent of the Legislature to enact legislation regarding the determination of significant effects resulting from greenhouse gas emissions.~~

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it

proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would require a lead agency, in determining whether a project may have a significant effect on the environment, relating to the GHG emissions associated with the project, to apply specified criteria. By requiring a local lead agency to apply those criteria, the bill would impose a state-mandated local program.

The bill would provide that it is intended to specify standards for determining the significance of a project's environmental effects relating to GHG emissions under CEQA, and that it does not limit the application to proposed projects of any other applicable laws, rules, or regulations, relating to GHG emissions or emissions reductions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.*

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) In 2006, the Legislature passed, and the Governor signed,*
- 4 *Assembly Bill 32 (AB 32) (Chapter 488 of the Statutes of 2006),*
- 5 *which requires the state to reduce its greenhouse gas emissions*
- 6 *to 1990 levels by 2020. According to the State Air Resources Board*
- 7 *(ARB), this will require the state to reduce its greenhouse gas*
- 8 *emissions by approximately 30 percent.*
- 9 *(b) In Massachusetts v. E.P.A. (2007) 549 U.S. 497, the United*
- 10 *States Supreme Court found that greenhouse gases are air*
- 11 *pollutants under the federal Clean Air Act (42 U.S.C. Sec. 7401*
- 12 *et seq.) that have effects on the health and welfare of the public.*
- 13 *(c) The California Environmental Quality Act (CEQA) (Division*
- 14 *13 (commencing with Section 21000) of the Public Resources*
- 15 *Code) requires public agencies to review the potentially significant*
- 16 *environmental effects of proposed projects, including the effects*

1 of greenhouse gas emissions, and, if those effects may be
2 significant, to consider feasible alternatives or mitigation measures
3 that would substantially reduce significant adverse environmental
4 effects.

5 (d) In 2007, the Legislature passed, and the Governor signed,
6 Senate Bill 97 (Chapter 185 of the Statutes of 2007), which directed
7 the Office of Planning and Research to submit to the Natural
8 Resources Agency guidelines for the analysis and mitigation of
9 greenhouse gas emissions pursuant to CEQA. In 2009, the Natural
10 Resources Agency adopted amendments to the CEQA guidelines
11 for the analysis and mitigation of greenhouse gas emissions that
12 did not include a threshold of significance for greenhouse gas
13 emissions.

14 (e) The absence of a statewide framework for determining
15 thresholds of significance for greenhouse gas emissions has led
16 to uncertainty as to the appropriate significance thresholds for
17 greenhouse gas emissions for projects being evaluated under
18 CEQA. This uncertainty leads to confusion and compromises the
19 state's efforts to achieve the goals of AB 32 and to restore and
20 maintain a sound and vibrant economy.

21 (f) To achieve the goals of AB 32, California should enact a
22 uniform approach determining thresholds of significance for
23 greenhouse gas emissions under CEQA, consistent with AB 32
24 requirements for the state to reduce its greenhouse gas emissions
25 by 30 percent by 2020.

26 (g) The adoption of a statewide framework for determining
27 thresholds of significance for greenhouse gas emissions should be
28 updated regularly as ARB moves forward with the implementation
29 of AB 32.

30 SEC. 2. Section 21082.3 is added to the Public Resources Code,
31 to read:

32 21082.3. (a) In determining whether a project may have a
33 significant effect on the environment relating to the greenhouse
34 gas emissions associated with that project, the lead agency shall
35 apply the following criteria:

36 (1) A project that is exempt from this division pursuant to any
37 statute or any guidelines adopted pursuant to Section 21084 shall
38 be exempt from this division notwithstanding any greenhouse gas
39 emissions associated with the project, and no analysis of the
40 project's greenhouse gas emissions is required.

1 (2) A project that is not covered by paragraph (1), but that
2 complies with applicable provisions of a local, regional, or
3 statewide greenhouse gas emissions reduction plan or all
4 applicable regulations issued thereunder shall be deemed to have
5 a less than significant effect on the environment relating to
6 greenhouse gas emissions for purposes of this division. In order
7 to qualify under this paragraph, the plan or applicable regulations
8 shall be specified in law or have been adopted by a public agency
9 in compliance with this division. The negative declaration,
10 mitigated negative declaration, environmental impact report, or
11 other environmental document approved for a project covered by
12 this paragraph shall include a brief statement explaining the
13 project's compliance with the plan or applicable regulations, but
14 is not required to quantify project-specific greenhouse gas
15 emissions unless that quantification is necessary to demonstrate
16 compliance with the identified plan or regulations.

17 (3) A project that is not covered by paragraph (1) or (2), but
18 that adopts best performance standards for greenhouse gas
19 reductions shall be deemed to have a less than significant effect
20 on the environment relating to greenhouse gas emissions, if those
21 best performance standards have been adopted by a public agency.
22 For purposes of this section, "best performance standards" are
23 feasible means that are achieved in practice for reducing or
24 limiting greenhouse gas emissions, including, but not limited to,
25 standards concerning equipment type and design, and operational
26 and maintenance practices.

27 (4) A project that is not covered by paragraph (1), (2), or (3),
28 but that reduces project-specific greenhouse gas emissions by 30
29 percent from business-as-usual shall be deemed to have a less than
30 significant effect on the environment relating to greenhouse gas
31 emissions, or to have mitigated the environmental effects of
32 greenhouse gas emissions to a less than significant level. For
33 purposes of this section, "business-as-usual" is the three year
34 average emissions inventory per sector established by the State
35 Air Resources Board for purposes of calculating emissions
36 reduction targets pursuant to the Global Warming Solutions Act
37 of 2006 (Division 25.5 (commencing with Section 38500) of the
38 Health and Safety Code), as that emissions inventory may be
39 updated from time to time by the State Air Resources Board. The
40 negative declaration, mitigated negative declaration,

1 *environmental impact report, or other environmental document*
2 *approved for a project covered by this paragraph shall comply*
3 *with applicable provisions of the guidelines adopted pursuant to*
4 *Section 21083.05. The project's environmental analysis shall*
5 *explain how applicable mitigation measures or emissions reduction*
6 *measures, including where appropriate the application of reduction*
7 *measures adopted or specified by the State Air Resources Board*
8 *or other local, regional, or state agencies, provide the required*
9 *reduction of emissions that would otherwise be associated with*
10 *the proposed project.*

11 *(b) This section is intended to specify standards for determining*
12 *the significance of project environmental effects relating to*
13 *greenhouse gas emissions under this division. This section does*
14 *not limit the application to proposed projects of any other*
15 *applicable laws, rules, or regulations relating to greenhouse gas*
16 *emissions or emissions reductions or the authority of a local, state,*
17 *or federal agency to directly regulate greenhouse gas emissions*
18 *under other statutory authority.*

19 *SEC. 3. No reimbursement is required by this act pursuant to*
20 *Section 6 of Article XIII B of the California Constitution because*
21 *a local agency or school district has the authority to levy service*
22 *charges, fees, or assessments sufficient to pay for the program or*
23 *level of service mandated by this act, within the meaning of Section*
24 *17556 of the Government Code.*

25 ~~SECTION 1. Section 21082.3 is added to the Public Resources~~
26 ~~Code, to read:~~

27 ~~21082.3. It is the intent of the Legislature to enact legislation~~
28 ~~regarding the determination of significant effects resulting from~~
29 ~~greenhouse gas emissions.~~